

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1516 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER

GUJARAT STATE ROAD TRANS.CORP

Versus

BUDHABHAI MANGALBHAI PARMAR

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Appearance:

MR HC RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate appearing for the petitioner is present. The facts of the present petition are that the respondent was working as conductor and he was employed on 30.4.82. The charge against the respondent was that after remaining on duty on that day, from next day i.e. from 1st May, 1982, the respondent did not remained present for duty and remained absent

from duty unauthorizedly and the respondent workman had neither obtained prior permission from the authority nor sent report to his leave. The respondent was working at Borsad Depot and according to the respondent, he was sick and he had sent medical report to the depot manager of Borsad Depot and had informed that as and when he will report for duty, on that day, he will produce the medical certificate in support of his sickness. The petitioner corporation has issued chargesheet for remaining unauthorizedly absent to the respondent and after holding departmental inquiry, ultimately, the respondent workman was dismissed from service on 28.8.1982. The respondent had challenged the order of dismissal from service by filing the reference before the labour court at Nadiad in Reference No. 158 of 1984. The respondent has not challenged the legality, validity and propriety of the departmental proceedings before the labour court and to that extent, he had filed purshis vide Exh. 9 and the petitioner corporation has produced the documentary evidence vide Exh. 8.

The labour court, after considering the misconduct alleged to have been committed by the petitioner and found to have been proved by the corporation and considering the gravity of the misconduct, the labour court has found that the punishment of dismissal from service is unjustified and is disproportionate and found that it was unreasonable. Therefore, the labour court has granted reinstatement with continuity of service and with 50 percent of back wages for intervening period under its award dated 11.1.1988.

This Court, while issuing rule on 8.1.1991, granted interim relief against the back wages and no stay was granted qua reinstatement of the respondent in service and on the contrary, the corporation was directed to reinstate the respondent in service immediately if he has not reached the age of retirement so far. Therefore, naturally, the respondent has been reinstated in service of the corporation.

The labour court has considered the gravity of misconduct for remaining absent for a period of about 11 days without submitting report and medical certificate. The labour court has also considered the reply to the chargesheet submitted by the respondent workman wherein he had pointed out that he had sent report to the competent authority and due to sickness, he was not able to report for duty and he, therefore, remained absent for a period of 11 days. Therefore, the labour court has

considered the punishment imposed upon the respondent and found that the same was unjustified and disproportionate to the guilt established against the respondent workman and therefore, the labour court passed award of reinstatement of the respondent workman in service with continuity of service by directing the petitioner corporation to withheld 50% of the back wages. The learned advocate appearing for the petitioner has submitted that the grant of 50% of back wages to the respondent amounts to premium for misconduct which has been committed by the respondent workman.

After considering the submissions made by the learned advocate, I am of the opinion that the labour court has not committed any error while passing the said award. In decision reported in AIR 1994 SC 215, the Hon'ble apex Court has held that the punishment of dismissal from service is harsh and disproportionate. The apex court has further held that the employee while admitting the fact that he had over stayed the period of leave and had explained the circumstances in which it was unavoidable for him to continue on leave and he was forced to do so on account of unexpected circumstances and, therefore, according to the principles laid down by the apex court in the said decision, punishment of dismissal for over stay is harsh since the circumstances were such that it was not his intention to willfully flout the order but the circumstances prevented or forced him to do so. In the recent decision of the apex court in case of Saiyad Zahir Husen vs. Govt. of India and others reported in 1999 SCC Lab. & Services, 666 has also decided the identical case of remaining absent for a short period of about seven days. The apex court has held that in our view, in the facts and circumstances of the case, punishment of dismissal for remaining absent for such a period is too harsh to sustain and on the contrary, it is required to be substituted by appropriate lesser punishment. Therefore, the apex court has held that the end of justice would met if an order of dismissal is set aside and the reinstatement is directed with continuity of service with all other consequential benefits save and except withholding 50% of the back wages from the date of dismissal till the date of reinstatement.

Therefore, after considering the above two decisions of the Hon'ble apex court and also considering the view taken by the apex court in case of remaining absent for such a short period, punishment of dismissal from service is considered to be harsh and unjustified and, therefore, according to my view, the view taken by

the labour court is correct, legal and valid and is in consonance with the legal position and the same shall not warrant any interference by this Court in this petition under Article 227 of the Constitution of India. It is more so when no infirmity has been pointed out by the learned advocate for the petitioner corporation. Therefore, the petition deserves to be dismissed. Same is, therefore, dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

Since the payment of back wages was stayed by this Court by way of interim relief while admitting this petition, and today, I am rejecting this petition, I am of the opinion that the end of justice will met if the petitioner corporation is directed to pay the back wages to the respondent workman as directed by the labour court under the impugned award within the period of three months from the date of receipt of certified copy of this order. I direct the petitioner - Corporation to act accordingly.

8.10.1999. (H.K.Rathod,J.)

Vyas